Rule 81 (a) (3), Federal Rules of Civil Procedure:

(a) To What Proceedings Applicable.

(3) In proceedings under Title 9, U.S.C., relating to arbitration, or under the Act of May 20, 1926, c. 347, § 9 (44 Stat. 585), U.S.C., Title 45, § 159, relating to boards of arbitration of railway labor disputes, these rules apply to appeals, but otherwise only to the extent that matters of procedure are not provided for in those statutes. These rules apply (1) to proceedings to compel the giving of testimony or production of documents in accordance with a subpoena issued by an officer or agency of the United States under any statute of the United States except as otherwise provided by statute or by rules of the district court or by order of the court in the proceedings, and (2) to appeals in such proceedings.

PERTINENT MISSISSIPPI STATUTES

Mississippi Code 1942 Annotated

§2106. Elections—intimidating electors.

If any person shall, by illegal force, or threats of force, prevent, or endeavor to prevent, any elector from giving his vote, he shall, upon conviction, be punished by imprisonment in the penitentiary for a term not exceeding two years, or in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or both.

§2111. Elections—fraud in registration of voters.

If any registrar appointed by law to register votes, shall intentionally refuse or neglect to register any voter entitled to registration, or register any voter not entitled to registration, he shall be punished, on conviction, by

imprisonment in the penitentiary not less than one year nor more than three years.

§3275. Penalties on election officers.

Any election commissioner, or any other officer or person acting as such, or performing election duty, who shall wilfully refuse or knowingly fail to perform any duty required of him by the election laws, or who shall violate any of the provisions thereof, shall be guilty of a misdemeanor, and, upon conviction, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or be imprisoned in the county jail not less than ten days nor more than ninety days, or both.

APPENDIX 2

(From printed Record pages 181-182)

(181)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF MISSISSIPPI DELTA DIVISION

IN RE MRS. WALTER LEWIS, CIRCUIT CLERK AND REGISTRAR OF ELECTIONS OF BOLIVAR COUNTY, MISSISSIPPI

No. D-C-1-61

ORDER

This cause came on for hearing by the court upon the application of Robert F. Kennedy, Attorney General of the United States, and the answer and motions of the respondent, Mrs. Walter Lewis, Circuit Clerk and Registrar of Elections of Bolivar County, Mississippi; and the court having considered arguments of counsel and briefs for the respective parties, and being fully advised in the premises, is of the opinion and finds that each and every motion filed on behalf of the respondent should be overruled and that the application of Robert F. Kennedy, Attorney General of the United States, should be granted as hereinafter provided; and it appearing to the court that Title 42, U.S.C., § 1974, the statute upon which the application in this cause is predicated, applies only to general, special or primary elections at which candidates for the office of President, Vice-President, Presidential Elector, member of the Senate and member of the House of Representatives of the United States are voted upon; and, it further appearing that Title 42, U.S.C., § 1974,

requires voting registrars to preserve for twenty-two (22) months records relating to said elections; and, that the effective date of Title 42, U.S.C., § 1974, was May 6, 1960; and, that the demand made by the applicant in this cause was filed in this court on January 11, 1961; and, that the only elections conducted within twenty-two (22) months next preceding the filing of the application were

(182)

the primary election held on June 7, 1960, and the general election held on November 8, 1960, it is

Ordered:

That all motions filed on behalf of the respondent be and are hereby overruled.

2) That the demand of the applicant in this cause shall be and is hereby granted.

3) That Mrs. Walter Lewis, Circuit Clerk and Registrar of Elections of Bolivar County, Mississippi, make available to said applicant or his representatives during reasonable business hours at the Registrar's offices at Cleveland, Mississippi, and Rosedale, Mississippi, for inspection, reproduction and copying, all records and papers which were in her possession on May 6, 1960, or which have come into her possession since May 6, 1960, and which relate to any application, registration, payment of poll tax, or other act requisite to voting relative to the eligibility of any listed voter eligible to vote in the primary election of June 7, 1960, and the general election of November 8, 1960.

4) That said inspection may begin promptly after date of this order and continue from day to day thereafter; and the applicant, or his representatives, shall complete

said inspection as quickly as reasonably possible with the least possible interference with the official business of said Registrar.

This the 16th day of November, 1962.

/s/ Claude F. Clayton
District Judge

Ent. C.O.B. 2, pp. 509-510, on November 16, 1962.

APPENDIX 3

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20411

ROBERT F. KENNEDY,
Attorney General of the United States,
Appellant-Appellee

versus

MRS. WALTER LEWIS, Circuit Clerk and Registrar of Elections of Bolivar County, Mississippi,
Appellee-Appellant

(AND REVERSE TITLE)

Appeal from the United States District Court for the Northern District of Mississippi

---

U.S. COURT OF APPEALS
FILED
Sept. 18, 1963
EDWARD W. WADSWORTH
CLERK

Before WISDOM, GEWIN, and BELL, Circuit Judges

PER CURIAM:

It is ORDERED that the motions of the United States for summary reversal, and to affirm that part of the order from which appellee has taken a cross-appeal be, and

they are hereby DENIED; without respect however to the merits of the appeal and cross-appeal.

APPENDIX 3A

ARGUMENT AND SUBMISSION.

Extract from the Minutes of November 15, 1963

ROBERT F. KENNEDY, Attorney General of the United States

No. 20411

versus

MRS. WALTER LEWIS, Circuit Clerk and Registrar of Elections of Bolivar County, Mississippi.

On this day this cause was called, and after argument by Gerald P. Choppin, Attorney, Department of Justice, for appellant-appellee and Dugas Shands, Esq., Assistant Attorney General, for appellee-appellant, was submitted to the Court.

* * * * * * * * * * *

* * * * * * * * * * *

APPENDIX 4

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 20411

ROBERT F. KENNEDY, Attorney General of the United States,

Appellant-Appellee,

versus

MRS. WALTER LEWIS, Circuit Clerk and Registrar of Elections of Bolivar County,

Appellee-Appellant.

(AND REVERSE TITLE)

Appeals from the United States District Court for the Northern District of Mississippi

(December 6, 1963.)

Before TUTTLE, Chief Judge, JONES, Circuit Judge, and JOHNSON, District Judge.

PER CURIAM: Although this is cast in the form of an appeal by the Attorney General, with a cross-appeal by the defendant Registrar of Elections of Bolivar County, Mississippi, the principal argument is put forward by the appellee. We have carefully analyzed each contention made on behalf of the appellee, Registrar Mrs. Lewis, touching on the propriety of the order of the District Court. We conclude that every issue pre-

sented by her attacking the order has been foreclosed by prior decisions of this Court.

The constitutionality of Title III of the Civil Rights Act[1] and its constitutionality when applied in the manner applied here by the District Court have been expressly sustained by *Kennedy v. Lynd*, 5 Cir., 306 F.2d 222, and *Kennedy v. Owen, et al*, 5 Cir., . . . F.2d . . . . We repeat here that the proceedings and hearing afforded to Mrs. Lewis fully comport with procedural due process and there is no substance in the attacks of the appellee on the constitutionality of this section of the law under the Fifth Amendment, the Sixth Amendment, or any other part of the Constitution.

When this Court made a similar statement in the *Owen* case, *supra*, one judge concurred specially, and commented "While I am not willing to go to the extent of holding the Civil Rights Acts of 1960 unconstitutional, I am also not willing to say that there *is no substance* in the attack on such acts in the context of this case. It seems appropriate for that question to be decided by the United States Supreme Court." In spite of that suggestion the County Registrars in the *Owen* case, represented by the Attorney General of the State of Mississippi, as is Mrs. Lewis here, sought no writ of certiorari from the Supreme Court.

Now the same questions are raised again by the same counsel. The answer must be the same. The order of the trial court is affirmed so far as it is challenged by the appellee-cross appellant.

The Government, however, appeals on the ground that the trial court improperly limited the Attorney General's

---

[1]Public Law 86-449, Title III §301-306, May 1960, 42 U.S.C.A. §1974.

right to inspect and copy to only those records which pertained to the primary election of June 7, 1960 and the general election of November 8, 1960. It also limited the right to inspect to documents relating to any "act requisite to voting relative to the eligibility of *any listed voter eligible to vote* in the primary election, etc." (Emphasis added) This, as the Government points out, restricts the investigation to the records pertaining to those who have successfully sought to qualify.

Both of these limitations are invalid. To limit the inquiry to the records touching on any specified election and not to permit inspection as to papers in the office subsequent to the date of the filing of the suit dealing with subsequent registrations or elections is to construe the statute too narrowly. Equally, to limit the inspection to the documents on file relative to those *who have become qualified*, completely denies the Attorney General an opportunity to inspect the records as to those who may have been illegally denied the right to qualify. This is really what the investigation is all about.

This Court has heretofore in the *Owen* case, *supra*, indicated the kind of order that is required in such a case as this. The order of the District Court in this case must be amended to grant the same right to inspect and copy as was ordered there, without any of the limitations included in the challenged order.

The judgment is AFFIRMED in part and ordered MODIFIED in part and the case is REMANDED for further proceedings not inconsistent with this opinion.

APPENDIX 5

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

October Term. 1963

No. 20411

D. C. Docket No. D-C-1-64

ROBERT F. KENNEDY, Attorney General of the United States,

Appellant-Appellee,

versus

MRS. WALTER LEWIS, Circuit Clerk and Registrar of Elections of Bolivar County,

Appellee-Appellant.

(AND REVERSE TITLE)

Appeal from the United States District Court for the Northern District of Mississippi

Before TUTTLE, Chief Judge, JONES, Circuit Judge, and JOHNSON, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Mississippi, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed in part and modified in part in accordance with the opinion of this Court; and that this cause be, and it is hereby remanded to the said District Court for further proceedings not inconsistent with said opinion.

It is further ordered and adjudged that the appellee-appellant, Mrs. Walter Lewis, Circuit Clerk and Registrar of Elections of Bolivar County, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

December 6, 1963

Issued as Mandate:

APPENDIX 6

[158]—Tuttle

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20411

ROBERT F. KENNEDY, Attorney General of the United States,

Appellant-Appellee,

v.

MRS. WALTER LEWIS, Circuit Clerk and Registrar of Elections of Bolivar County,

Appellee-Appellant.

(AND REVERSE TITLE)

Appeals from the United States District Court for the Northern District of Mississippi

(JANUARY 28, 1964)

U.S. COURT OF APPEALS
FILED
Jan. 28, 1964
EDWARD W. WADSWORTH
CLERK

ON PETITION FOR REHEARING

Before TUTTLE, Chief Judge, JONES, Circuit Judge, and JOHNSON, District Judge.

PER CURIAM:

It is ORDERED that the petition for rehearing filed in the above styled and numbered cause be, and the same is, hereby DENIED.

APPENDIX 7

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 20411

ROBERT F. KENNEDY, Attorney General of the United States

Appellant,

versus

MRS. WALTER LEWIS, Circuit Clerk and Registrar of Elections of Bolivar County, Mississippi

Appellee.

(AND REVERSE TITLE)

ON CONSIDERATION OF THE APPLICATION of the Appellee-Appellant in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellee-Appellant to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, IT IS ORDERED that the issue of the mandate of this court in said cause be and the same is stayed for a period of twenty days, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within twenty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition and record have been filed. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of twenty

days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

DONE AT NEW ORLEANS, LA., this 20th day of February, 1964.

s/ ELBERT P. TUTTLE
United States Circuit Judge.

(ORIGINAL FILED—FEBRUARY 20, 1964)

APPENDIX 7A

(Extension of Stay in above case, Appendix 7)

O R D E R

Upon consideration of the application of appellee-appellant, Mrs. Lewis, in the above numbered and entitled cause for an extension of time of stay of the mandate of this Court, heretofore granted on the 20th day of February, 1964, it is now ORDERED that the issue of the mandate of this Court in said cause be and the same is stayed for an additional period of ten days, or until and including Saturday, March 21, 1964 the stay to continue in force until the final disposition of the case by the Supreme Court, provided that on or before said March 21, 1964, there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that certiorari petition and record have been filed. It is further ORDERED that the Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of the said extended stay; unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

DONE at Atlanta, Georgia, this March 9, 1964.

s/ Elbert P. Tuttle
Elbert P. Tuttle, Chief Judge
Fifth Circuit

APPENDIX 8

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 19636

ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE UNITED STATES,

Appellant,

versus

THERON C. LYND, REGISTRAR OF ELECTIONS OF FORREST COUNTY, MISSISSIPPI,

Appellee.

Appeal from the United States District Court for the Southern District of Mississippi.

No. 19737

ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE UNITED STATES,

Appellant,

versus

MRS. MARY K. BRYCE, REGISTRAR OF VOTERS OF BOSSIER PARISH, LOUISIANA,

Appellee.

No. 19738

ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE UNITED STATES,

Appellant,

versus

MRS. WINNICE J. P. CLEMENT, REGISTRAR OF VOTERS OF WEBSTER PARISH, LOUISIANA,

Appellee.

No. 19739

ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE UNITED STATES,

Appellant,

versus

SIDNEY WELLS PLATT, REGISTRAR OF VOTERS OF DESOTO PARISH, LOUISIANA,

Appellee.

No. 19740

ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE UNITED STATES,

Appellant,

versus

U. CHARLES MITCHELL, REGISTRAR OF VOTERS OF CADDO PARISH, LOUISIANA,

Appellee.

Appeals from the United States District Court for the Western District of Louisiana.

(July 11, 1962)

Before RIVES, BROWN and WISDOM, Circuit Judges.

BROWN, Circuit Judge: These cases from two District Courts in two States raise in a number of different procedural ways the central question of the proper disposition of a Title III proceeding by the United States Attorney General for appropriate court orders to obtain "inspection, reproduction, and copying" of voter records. Public Law 86-449, Title III, §§ 301-306, May 1960, 42 USCA § 1974.

A consideration of these two groups of cases from as many courts and states reflects a further common thread —a basic misconception by the respective trial Judges concerning a Title III proceeding. As this is a matter of recurring importance, we think it appropriate to make plain again that which we have tried so painstakingly to make plain before. That includes, without any reservations whatsoever, a reiteration of our prior decisions. These start with *In re Dinkens*, 5 Cir., 1961, 285 F.2d 430, approving and adopting the opinion and decision of Judge Johnson in *State of Alabama* v. *Rogers*, M.D. Ala., 1960, 187 F. Supp. 848; and the two subsequent decisions, *Kennedy* v. *Bruce*, 5 Cir., February 5, 1962, 298 F.2d 860; and *United States* v. *Lynd*, 5 Cir., April 10, 1962, 301 F.2d 818. A restatement of these principles will, we think, readily indicate the proper disposition of each of the individual cases.

At the outset we emphasize again that the filing of the application by the Attorney General is not the commencement of an ordinary, traditional civil action with all of its trappings. It is, however, comparable to the form of a traditional order to show cause, or to produce in aid of an order of an administrative agency. It certainly has the requisites of a "case or controversy" to satisfy the requirements of Article III of the Constitution. *In re Summers*, 1945, 325 U.S. 561, 65 S. Ct. 1307, 89 L. Ed.

1795; *Aetna Life Ins. Co. of Hartford v. Haworth*, 1937, 300 U.S. 227, 57 S. Ct. 461, 81 L. Ed. 617. There are adversaries—the Attorney General seeking an order against the objecting State official as custodian. § 1974 b. The dispute is real and present as the application seeks "appropriate process," § 1974 d, in order "to compel the production" of records or papers demanded by the Attorney General in writing. § 1974 b. That by its terms and operation, Title III narrowly circumscribes the issues upon which the Court is to act does not make the proceeding or that determination any less judicial. For "in passing upon the application [to issue or not issue an order to produce] the court exercises judicial judgment. It does not confer or withhold a favor." *Tutun v. United States*, 1926, 270 U.S. 568, 578, 46 S. Ct. 425, 70 L. Ed. 738.

But this is not, we repeat, the ordinary civil action. It is a special statutory proceeding in which the courts play a limited, albeit vital, role. In words adopted as our own, we said that Title III provides "an effective means whereby preliminary investigations of registration practices can be made in order to determine whether or not such practices conform to constitutional principles." 187 F. Supp. 848, 853. Relying on the principles expounded in *Hannah v. Larche*, 1960, 363 U.S. 420, 80 S. Ct. 1502, 4 L. Ed. 2d 1307, we translated them effectively in specific terms of a Title III proceeding. "Here the function sought to be exercised by the Attorney General is—as in Hannah—purely investigative." 187 F. Supp. 848, 854.

Since it is a special statutory proceeding, it does not require pleadings which satisfy usual notions under the Federal Rules of Civil Procedure. All that is required is a simple statement by the Attorney General that after a § 1974 b written demand for inspection of records and papers covered in § 1974, the person against whom an

order for production is sought under § 1974 d has failed or refused to make such paper "available for inspection, reproduction, and copying * * *."

There is no place for a motion for a bill of particulars or for a more definite statement under F. R. Civ. P. 12 (e). There is no place for any other procedural device or maneuver—either before or during any hearing of the application—to ascertain the factual support for, or the sufficiency of, the Attorney General's "statement of the basis and the purpose therefor" as set forth in the written demand. § 1974 b. Thus with respect to the reasons why the Attorney General considers the records essential, there is no place, either as a part of pleadings, discovery, or trial, for interrogatories under F. R. Civ. P. 33, oral depositions of a party under F. R. Civ. P. 26 (a), 30, production of documents under F. R. Civ. P. 34, or request for admissions as to facts or genuineness of documents or other things under F. R. Civ. P. 36, 37. The same is true as to the nature, kind or specification of the records and papers sought, the names, identities or addresses of persons thought to have received discriminatory treatment, whether favorable or adverse, and the like.

On the filing of this simple statement by the Attorney General, the Court is required to treat it as a summary proceeding. The Court, with expedition, should grant the relief sought or, if the respondent-custodian opposes the grant of such relief, the matter should be set down without delay for suitable hearing on the matters open for determination. These are, of course, severely limited. In the event of a genuine dispute thereon, it would be in order for the Court to determine whether the written demand has been made, § 1974 b, or whether the custodians against whom orders are sought have been given reasonable notice of the pendency of the proceeding. On the other

hand, the factual foundation for, or the sufficiency of, the Attorney General's "statement of the basis and the purpose" contained in the written demand, § 1974 b, is not open to judicial review or ascertainment. Nor is the scope of the order to produce insofar as it concerns the nature of the records or papers. This is so because the papers and records subject to inspection and demand have been specifically identified by Congress. The Attorney General is entitled to have made available for his "inspection, reproduction and copying" in the custodian's office "any record or paper" which § 1974 requires "to be retained and preserved." The incorporated standard of § 1974 is sweeping. Every election officer is required to retain and preserve "* * * all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting" in the specified elections for federal offices.[1] If, after issuance of an order to produce, a genuine dispute subsequently arises as to whether or not any specified particular paper or record comes within this broad statutory classification of "all records and papers * * * relating to any * * * act requisite to voting," the Court would, of course, be open for its determination.

Likewise, there is no question for judicial determination as to how far back the records go. This, too, is fixed by the statute. In other words, Congress has determined *what* records are to be retained and subject to production. Since the statute specifies "all records and papers" in the

1. The time and the nature of the elections are tied together as § 1974 provides that all such records shall be retained and preserved "for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President; presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for * * *."

officer's custody "relating to any application * * * or other act requisite to voting * * *," in such elections held within twenty-two months, the custodians' duty to retain and preserve and the Attorney General's right of inspection and copying extend as far back as the earliest date of any such record or paper which bears on the eligibility of any currently listed voter to vote in such election.[2] If after granting the order as to all such records back to the time of the earliest federal election within the 22-month period preceding the filing of the § 1974 application, any substantial question arises concerning the most remote date beyond that time, the court will be open to determine that issue on the basis of the statutory standard. But the cutoff date is in no way related to the identity or status of "the person having custody, possession, or control," § 1974 b, or the time at which any such person acceded to or terminated such office.

Similarly, the right of the Attorney General to inspect and copy such records is not dependent upon an existing demonstrable right in the United States or the Attorney General to successfully maintain an injunction suit under, or similar to, § 1971 (a)-(f) against any present or preceding election officer. His right to records does not require that he show he could win without them. The right of the Attorney General to secure judicial enforcement of the written demand, § 1974 b, is not affected in any way by the pendency of a § 1971 case or the right of discovery

2. Thus, for example, in Alabama where registration is permanent and reregistration is not required, this would extend as far back as the earliest application for registration of any person eligible to vote in the most recent federal election. See *State of Alabama* v. *United States*, 5 Cir., 1962, ___ F 2d ___, note 7 and appended text (No. 19051, June 1, 1962). Provision is made in Louisiana also for certain permanent registrations. See L.R.S. 18:231-261, Acts 1952, No. 415, § 2 as amended Acts 1954, No. 256, § 1 *et seq.*

in such case under the Federal Rules of Civil Procedure. The two proceedings are distinct and distinctively separate.

This analysis demonstrates the narrowly confined issues open for judicial review or ascertainment. The restricted substantive nature of the proceeding consequently limits in like manner the place of, the resort to, or the application of procedural rules or devices as well as the scope and nature of any hearings required and the evidence admissible thereon.

With these principles clearly in mind, the disposition of each of the separate cases is readily made.

No. 19636

Lynd, Registrar Forrest County, Mississippi

There is no necessity for going into any detail. It suffices to say that over 18 months ago the Attorney General on January 19, 1961, filed his Title III application for an order requiring the Registrar to make available for inspection and copying all records or papers in his possession relating, in the words of the statute, to the elections for federal office. This was to secure the inspection demanded in writing on August 11, 1960. After a series of motions, motions to dismiss; opposing substitution, motions for more definite statement and briefs and repeated extended oral arguments thereon, but with no clear-cut ruling, no indication that this interminable proceeding would ever come to an end, and certainly never an order for production, the District Court effectually denied the Attorney General's applicatoin.

The stated reason was that subsequent to the § 1974 application, the Attorney General in the name of the United States filed a § 1971 complaint against Lynd, as Registrar,

seeking injuctive relief for discriminatory practices.[3] In the course of that proceeding, and on the Government's broader motion under F. R. Civ. P. 34, the Court had ordered the production of certain, but limited, voter records. The Government contends that this Rule 34 order was too restricted, but this issue is not before us directly. The District Court in its opinion concluded that "the Attorney General has instituted two separate suits against the same defendant and that the later [§ 1971 discrimination] suit embraces all of the subject matter contained in the former [§ 1974] suit." Consequently, the Court went on, by filing his Rule 34 motion the Attorney General "thereby abandoned in its entirety" the § 1974 application so that "the entire cause of action now pending before" the District Court in both the § 1974 and § 1971 cases "is embraced and contained in * * * [the § 1971] amended complaint and motion under Rule 34." On the basis of that the Court ruled that all of "the six motions pending in [the § 1974 proceeding] have been rendered and are academic and moot by reason of the abandonment of said * * * suit * * *." Then to snuff out the last vestige of life in this abandoned cause the Court, administering the *coup de grace*, declared that it "adjudges [the § 1974 proceeding] as abandoned and effectually nonexistent." On the basis of this opinion incorporated expressly in his order, the District Court then "ordered that this cause, and the complaint * * * be and the same are hereby remanded to the files of this Court."

We first reject the contention that this was not such a final order as to be appealable, 28 U.S.C.A. § 1291, *United States* v. *Wood*, 5 Cir., 1961, 295 F.2d 772, 777.

3. It was nonaction in this very case, construed by us to be an effectual denial of preliminary relief, that led to our injunction pending appeal in *United States* v. *Lynd*, 5 Cir., April 10, 1962, 301 F.2d 818.

On the merits, the action is clearly wrong. The Title III proceeding is investigative in nature. Its purpose is to enable the Attorney General to determine whether § 1971 suits or similar actions should be instituted. And it is to enable him to obtain evidence for use in such cases if and when filed. The Attorney General does not exhaust the § 1974 right which Congress accorded to that office by the filing of a § 1971 injunction suit. The discovery mechanisms available in such injunction action are necessarily geared to that particular claim. Questions of relevancy or good cause or other like considerations which must be evaluated in the injunction suit are completely foreign to the summary proceeding under § 1974.[4] Indeed, one of the clearest purposes of the Title III proceeding is to enable the Attorney General to assemble all of the voter record information within the time-reach of the statute relating to all persons as to whom there is a question concerning infringement or denial of their constitutional voting rights. Wide scope must be accorded the Attorney General in the facilities for adequate investigation. Relief under § 1971 (c) is not confined to named individual voter officials but extends as far as the sovereign State itself. The establishment of a discriminatory "pattern or practice" sets in motion the extraordinary remedies of § 1971 (e). Establishing a "pattern or practice" of such discrimination may go back many, many years. *State of Alabama v. United States*, 5 Cir., 1962, ____ F.2d ____ [No. ____

4. This is not to disparage the wonderful flexibility of such discovery weapons. Thus, for example, the scope of examination in pretrial depositions under F. R. Civ. P. 26 (b), and for production of documents under F. R. Civ. P. 34 in a § 1971 suit might well have to go back many, many years as a basis for establishing a pattern or practice of discrimination, § 1971 (e), or in leading to the "discovery of admissible evidence," F. R. Civ. P. 26 (b), to establish such pattern. At the same time, depending on the local registration system, the Attorney General's right under § 1974 might go back only 22 months, § 1974.

19051, June 1, 1962]. Clearly within the time cutoff period of § 1974, the Attorney General, in fulfillment of the duties imposed upon him by the Civil Rights Act of 1957 and 1960, is entitled to inspect and copy all of the voter papers and records as defined.

There is no longer any question about the respondent Lynd having actual notice of this application. The record establishes without contradiction that the § 1974 b written demand was made and that it adequately stated the basis and the purpose therefor.[5] There is nothing left in dispute. Consequently, the order of the District Court must be vacated, and the District Court is directed to grant without further delay the application to have these records made "available for inspection, reproduction, and copying at the principal office of such custodian" as requested. The mandate of this Court shall issue forthwith.

No. 19737 — *Bossier Parish*
No. 19738 — *Webster Parish*
No. 19739 — *DeSoto Parish*
No. 19740 — *Caddo Parish*

These cases were consolidated and heard together, both below and here. The District Judge, acutely aware of our prior decisions in *Kennedy* v. *Bruce*, 5 Cir., February 5, 1962, 298 F.2d 860, the earlier approval of Judge Johnson's decision and our even more recent decision in *United States* v. *Lynd*, 5 Cir., April 10, 1962, 301 F.2d 818, displayed an earnest concern that the decision comply fully with the principles we had announced. Despite the heavy demands of that busy District, Judge Dawkins heard and decided all four of these § 1974 applications within sixty days of their filing by the Attorney General on April 4.

---

5. It was substantially in the same words as the Louisiana demands, see note 6, *infra*.

1962. In each case there was an identical written demand, § 1974 b, and an express refusal upon the part of each Registrar to comply.[6]

The District Judge applying, as he was bound to, the principles we have expounded rejected the contentions asserted by each of the Registrars that the statement of "the basis and purpose therefor" in the letter demand was inadequate; that the demand as made would be in conflict with applicable Louisiana statutes; that there was no necessity for the inspection (at least in two Parishes) since there was no discrimination; and that Title III was unconstitutional. As to two of the Parishes, further objection was made that all or a part of these records had already been inspected and copied by the United States Civil Rights Commission. There was also an effort to limit any inspection and copying to a period of 22 months after November 6, 1961, or 22 months after the November, 1962, election. The Registrars also sought specific conditions limiting the number of representatives of the United States Attorney General, approval by the Court of the copying methods, and prohibiting the inspectors from questioning the Registrar's staff. All of these the District Judge, for adequate reasons, likewise overruled. As he was compelled to do, the Judge also rejected the contention that the Attorney General be required to specify the records.

---

6. The letter of United States Attorney General made this "statement of the basis and the purpose therefor," § 1974 b:

"This demand is based upon information in the possession of the Attorney General tending to show that distinctions on the basis of race or color have been made with respect to registration and voting within your jurisdiction.

"The purpose of this demand is to examine the aforesaid records in order to ascertain whether or not violations of Federal law in regard to registration and voting have occurred."

Having done that, the District Court then proceeded to enter orders granting the right of inspection and copying, but he attached certain conditions to which the United States Attorney objects. It is our conclusion here that these conditions were erroneously attached and, as in the other case, this largely resulted from a basic, though more narrowly confined, misconception of the nature and purpose of a Title III proceeding.

As to Bossier and Webster Parishes, the Court declined to allow inspection and copying of records prepared or compiled prior to April 1, 1961, on the ground that in April, 1961, the United States Civil Rights Commission had inspected and copied voting records in those Parishes. To the Attorney General's suggestion that the Department of Justice might not be able to get these records from the Civil Rights Commission, the Judge then provided that upon such a showing the order would be modified to allow inspection and copying of all voting records subsequent to the accession to office of the present Registrars.

We think this misconceives the underlying nature of a Title III proceeding. Congress has specifically committed the investigative responsibility to the Attorney General and has equipped him with machinery thought suitable for the effective fulfillment of that obligation. Congress has specified the person *who* shall seek. It has specified as well the person from *whom* the information shall be obtained. The latter is, of course, the custodian of the records, not the Federal Civil Rights Commission.

Undoubtedly Judge Dawkins—probably from his intimate contact with the work of the Civil Rights Commission as it came before his Court in the activity leading to *Hannah* v. *Larche*, 1960, 363 U.S. 420, 80 S. Ct. 1502, 4 L.

Ed. 2d 1307—felt that this current contemporary demand was oppressive and burdensome because it was a complete duplication. Where a District Judge actually finds that this is the situation, we have no doubt that in administering § 1794 d the power and duty to issue "appropriate process to compel the production" of such records and papers will include the power and duty to issue protective orders as well. But it seems quite likely from a consideration of the reports of the Civil Rights Commission to which we have been directed as a matter of judicial knowledge that a number of the records and papers which might well be important to the Attorney General were not copied by that Commission whose statutory function is quite different. Undoubtedly overlooked, also, was the technical problem facing the Attorney General in the future use of copies made or obtained from copies in the custody of the Civil Rights Commission. On the other hand, authenticity and admissibility of those made in the office of the Registrars would be quite clear. 28 U.S.C.A., §§ 1731, 1732.

The District Court was likewise in error in refusing to require the Registrars to produce those records prepared or compiled prior to the incumbency of the present Registrar. This was done presumably on the theory that the present Registrar could not be held responsible for acts and practices of his predecessors. This is again the basic error of confusing a Title III proceeding with an action for injunctive or other relief under § 1971. Here the Registrar is a party, not because the Attorney General is seeking a judicial declaration that such official has violated federal statutes or constitutional rights. The Registrar is a party because he is, in the words of the statute, the "officer of election," § 1974 e, and is the "person having custody, possession, or control of such record,"

§ 1974 b. The statute, subject only to the time cutoff prescribed, requires the retention and preservation of "all records and papers which come into his possession relating to any * * * act requisite to voting * * *." § 1974. All means all. The responsibility of such "officer of election" is not confined to records which are compiled subsequent to his taking office. His responsibility is as extensive as the cutoff date and whatever has come into his custody, possession or control from his predecessors, he must faithfully keep under the sanction of a fine or imprisonment if he "wilfully fails to" retain and preserve them as required, § 1974. As pointed out above, under § 1971 (c) and (e), the records and papers have an immediate importance as a likely source of significant information in determining the existence of a "pattern or practice" or conduct by current or prior voting officials which will "also be deemed that of the state."

We think also that it was erroneous for the District Court to prescribe that the inspection and copying should not commence until after September 1, 1962. The Court was, we know, concerned about possible interference with the performance of regular duties by these Registrars, several in very cramped and perhaps limited quarters, in connection with the primary election to be held in Louisiana on July 28, 1962, with the possibility that this would be followed by another primary on September 1. But we do not think that the record made before the District Court affords any real convincing reason why this much delay is required. For a proceeding commenced in April, 1962, the disposition would hardly be the prompt one which our decisions require if effective compliance is to be postponed five months. We think two things are of great importance in dealing with this problem. First, we are not discussing confidential, private papers and effects.

We are, rather, dealing with public records which ought ordinarily to be open to legitimate reasonable inspection and which by nature relate directly to the most vital of all public functions—the franchise of the citizen. Next, once it is recognized—as it surely must be now—that this act of Congress is valid and that Court decisions unmistakably indicate that the congressional objective of a prompt and expeditious inspection is to be achieved, we think there is really nothing to these mechanical objections. Copying 100 or 1,000 sheets would, at one time, have been a formidable thing. Modern photostating equipment will make short order of most of these demands, and where the task is more complicated because of volume or the pressure of contemporary interruptions for normal office operation, we are confident that with only slight personal adjustments, the agents of these dual sovereigns should be able to work out a reasonable schedule without putting that policing task upon the overburdened shoulders of a United States District Judge.

The result is that we sustain the appeal of the Attorney General. We hold that each of the conditions attached to the order to produce was erroneous. But in all other respects the orders were proper. Consequently, we reject all of the attacks asserted by the appeals (or cross appeals) of the Registrars. The orders are modified by deleting the conditions which we have found to be erroneous. As thus modified, the orders are affirmed and remanded to the District Court to fix consistent with this opinion a beginning time for the inspections. The mandate of this Court shall issue forthwith.

APPENDIX 9

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF MISSISSIPPI HATTIESBURG DIVISION

Civil Action File Number 1604

IN RE THERON C. LYND, REGISTRAR OF ELECTIONS OF FORREST COUNTY, MISSISSIPPI

This case is presented on motion to quash the demand of the Attorney General made on respondent under 42 U.S.C.A., Section 1974b, motion for a more definite statement of the *basis* and *purpose* for said demand and four separate motions of the respondent to dismiss the suit.

The discovery was not supplied by the respondent pursuant to the demand of the Attorney General and this suit was accordingly filed as an ex parte case pursuant to 42 U.S.C.A., Section 1974d. These statutes were apparently designed and intended to operate as an administrative procedure for obtaining discovery without suit if possible and with suit if necessary. The statute does not expressly authorize an ex parte action for this purpose and it would appear to the Court that if the statutory demand is refused that the necessary action would be adversary in form and in fact but that observation is unimportant now.

This suit was commenced by an instrument captioned Application for Order to Produce Records for Inspection, Reproduction and Copying which was filed in this court on January 19, 1961, as Cause Number 1604 on the docket of this court. Subsequently, on July 6, 1961, the Attorney General filed the complaint of United States of America

against Theron C. Lynd, Circuit Court Clerk and Registrar, Forrest County, Mississippi, et al., under 42 U.S.C.A., Section 1971, et seq. as Cause Number 1646 on the docket of this court. On October 10, 1961, the Attorney General filed an amended complaint in said Cause Number 1646 styled United States of America, Plaintiff, v. Theron C. Lynd, et al., Defendants, seeking the injunctive relief provided for in said Act and accompanied by a motion under Rule 34 of the Federal Rules of Civil Procedure to require the Defendant to produce and permit the inspection and copying of the same records sought in Cause No. 1604 on the docket of this court, aforesaid.

It is the opinion of this Court under the circumstances that the Attorney General has instituted two separate suits against the same defendant and that the later suit embraces all of the subject matter contained in the former suit; and that when the complaint in Cause No. 1646 was filed accompanied by its Rule 34 motion that the Plaintiff thereby abandoned in its entirety said Cause Number 1604; and that when the Plaintiff filed its amended complaint in Cause No. 1646 on October 10 and filed its motion under Rule 34 under said amended complaint on October 18, 1961, that it abandoned the original complaint; and that the entire cause of action now pending before this Court in Case No. 1604 and Case No. 1646 is embraced and contained in said last mentioned amended complaint and motion under Rule 34.

It is accordingly the opinion of the Court that the six motions pending In Re Theron C. Lynd, etc., No. 1604, have been rendered and are academic and moot by reason of the abandonment of said former suit by the subsequent suit in this court embracing the same subject matter and other relief therein requested. The Court, therefore, declines to act on either of said motions and adjudges Case

No. 1604 as abandoned and effectually non-existent and a proper order to the effect indicated may be presented for entry.

This January 15, A. D., 1962.

/s/ Harold Cox,
United States District Judge.

APPENDIX 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

Civil Action File Number 1604

IN RE: THERON C. LYND, REGISTRAR OF ELECTIONS OF FORREST COUNTY, MISSISSIPPI

ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE UNITED STATES,

vs.

THERON C. LYND, REGISTRAR OF ELECTIONS OF FORREST COUNTY, MISSISSIPPI.

Order

(Filed February 16, 1962, Loryce E. Wharton, Clerk, By: Margaret Estes, Deputy, Southern District of Mississippi.)

Pursuant to memorandum opinion of this Court issued on January 15, 1962, which is made a part hereof, it is hereby ordered that this cause, and the complaint and all motions of the defendant heretofore filed herein, be and the same are hereby remanded to the files of this Court.

ORDERED, ADJUDGED AND DECREED, this the 16th day of February, 1962.

/s/ Harold Cox
United States District Judge

APPENDIX 11

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 20634

ROBERT F. KENNEDY,

Appellant,

versus

R. APPLETON OWEN, Circuit Court Clerk and Registrar, Jefferson County, Mississippi; LEONARD B. CAVES, Circuit Clerk, Jones County, Mississippi; J. E. McDAVID, Circuit Clerk, Noxubee County, Mississippi; A. V. DAVIS, JR., Circuit Court Clerk and Registrar, Adams County, Mississippi; R. WHITAKER, Circuit Court Clerk and Registrar, Wilkinson County, Mississippi; MRS. JOHN MIKELL, Circuit Clerk, Marion County, Mississippi; and TALMADGE S. SAUCIER, Circuit Clerk, Lamar County, Mississippi,

Appellees.

Appeal from the United States District Court for the Southern District of Mississippi.

(July 3, 1963.)

Before TUTTLE, Chief Judge, and RIVES and GEWIN, Circuit Judges.

PER CURIAM: These consolidated cases came on for hearing on the motion for summary reversal by appellant in each case. The demand letter attached to each application was addressed to the appellee followed by the words "Circuit Clerk." Each appellee was in fact both Circuit Clerk and Registrar. The district court granted an inspection order as to the records each appellee possessed in his capacity as Circuit Clerk, but not as to the records in his custody as Registrar. The statute provides simply for a "demand in writing by the Attorney General or his representative directed to the *person* having custody, possession, or control of such record or paper . . . ." (Emphasis supplied.) 42 U.S.C.A. §1974b (Supp. 1962).

So long as the demand was addressed to and received by the proper person, it is immaterial that he was described as "Circuit Clerk" and was not also described as "Registrar." The person must comply with the statute as to any record or paper required by Section 1974 of Title 42 to be retained and preserved, and which is in his custody, possession or control in any capacity.

There is no substance in the attacks of the appellees on the constitutionality of Title III of the Civil Rights Act of 1960 (P.L. 86-449, 74 Stat. 86, 42 U.S.C.A. §1974, et seq.) under the Fifth Amendment, the Sixth Amendment, or any other part of the Constitution. See *State of Alabama, ex rel Gallion v. Rogers*, M.D. Ala. 1960, 187 F.Supp. 848, affirmed 5 Cir. 1961, 285 F.2d 430; *Kennedy v. Lynd*, 5 Cir. 1962, 306 F.2d 222, certiorari denied 371 U.S. 952.

It is therefore ORDERED:

That the judgments be, and they are hereby, reversed, and the causes are remanded to the District Court for the Southern District of Mississippi with in-

structions to grant forthwith the applications filed by the Attorney General of the United States and to order each appellee to make available to said Attorney General or his representative, for inspection, reproduction and copying, during reasonable business hours, all records and papers in the possession, custody or control of said appellee relating to any application, registration, payment of poll tax or other act requisite to voting in any primary, special or general election for Federal office in Mississippi, such inspection, reproduction and copying to take place in accordance with a schedule to be established forthwith by the District Court, and to commence forthwith in one of the seven counties herein involved, and upon completion thereof to commence in another of the seven counties, and to continue in such manner, county by county and in consecutive order, until such inspection, reproduction and copying is completed.

It is further ORDERED that appellees' cross-appeals be, and they are hereby, DISMISSED.

It is further ORDERED that the mandate issue forthwith. See Rule 32 of Fifth Circuit, as amended May 31, 1963.

JUDGE GEWIN CONCURS SPECIALLY.

GEWIN, Circuit Judge, CONCURRING SPECIALLY:

I concur in the result reached, because it is quite apparent that if the demand delivered to the state officials had been addressed to them in their capacity as Circuit Clerk and as Registrar, the District Court would have granted the relief sought. It is somewhat technical to require that the demand describe the official both as Circuit Clerk and as Registrar when one person is acting in both capacities. It seems appropriate to mention how

ever, that this appeal and a good deal of trouble could have been avoided if the officials making the demand had amended it to meet the objection raised.

As to the constitutional point asserted, I am not quite as positive that there is no substance in the attack on the statutes in question, as the opinion indicates. Some of the statutes involved here have ominous overtones. 42 U.S.C.A. 1974(c) prohibits the disclosure of any record or paper produced pursuant to the statute with certain exceptions, one of which is: ". . . and in the presentation of any case or proceeding before any court or *grand jury*." (emphasis supplied.) 18 U.S.C.A. 242 authorizes fine and imprisonment for ". . . the deprivation of any rights, privileges, or immunities secured or protected by the constitution and laws of the United States. . . ". It is not clear that the procedure here involved can be equated with the holding in *Hannah v. Larche, et al.*, 363 U.S. 420. That case involved action by the Federal Commission on Civil Rights under another statute. The instant proceeding is by the Attorney General of the United States assisted by agents of the F.B.I. When the law speaks of grand juries, punishments, the Attorney General, the F.B.I., and similar agencies, one naturally thinks of the rights secured by the Fifth and Sixth Amendments. While I am not willing to go to the extent of holding the Civil Right Acts of 1960 unconstitutional, I am also not willing to say that there *is no substance* in the attack on such acts in the context of this case. It seems appropriate for that question to be decided by the United States Supreme Court.

APPENDIX 12

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

WESTERN DIVISION

CIVIL ACTION NO. 1029

IN RE R. APPLETON OWEN, CIRCUT COURT CLERK AND REGISTRAR OF JEFFERSON COUNTY, MISSISSIPPI, FAYETTE, MISSISSIPPI

O R D E R

This cause having come on for hearing upon the application of Robert F. Kennedy, Attorney General of the United States, and the motion to dismiss by the respondent R. Appleton Owen, and this Court having heard argument of counsel and having considered the relevant authorities and being fully advised in the premises, is of the opinion and finds that the motion to dismiss by the respondent should be and is overruled, and the respondent having presented his objections to and defenses against the application no further pleading is necessary to enable this Court to rule, and that the application of Robert F. Kennedy, Attorney General of the United States should be granted only as to the records in the custody of the respondent in his capacity as Circuit Clerk and not in his capacity as Registrar.

The applicant having insisted before the Court that his demand letter and his application to this Court en-

titled him not only to records in the hands of this officer as Circuit Clerk, but also in his hands as Registrar, and this Court being of the opinion that the demand letter circumscribed the applicant's rights denies said application as to the records in this official's hands in his capacity as Registrar since the demand letter was addressed to him as Circuit Clerk, it is therefore:

ORDERED that R. Appleton Owen, Circuit Clerk of Jefferson County, Mississippi, make available to said applicant or his representatives at the Circuit Clerk's office in Fayette, Mississippi, for inspection, reproduction and copying, by and at the expense of said applicant, all records and papers in the possession or under the control of said Circuit Clerk in his capacity as Circuit Clerk but not in his capacity as Registrar relating to any applications, registration, payment of poll tax or other act requisite to voting in primary, special or general elections for Federal office in Mississippi, it being understood this will not entitle the applicant to inspect, reproduce or copy any applications for registration or any registration or poll books or any other election records in the possession or under the control of the respondent in his capacity as Registrar, and the applicant, or his representatives, shall complete said inspection, reproduction and copying as quickly as reasonably possible with the least possible interference with the Circuit Clerk's official business.

It is further ordered that insofar as the application of the Attorney General seeks to inspect, reproduce and copy all records and papers relating to any application, registration, payment of poll tax or other acts requisite to voting in any general, special or primary election for Federal office, which papers are in the custody, possession or control of R. Appleton Owen in his capacity as

Registrar of Jefferson County, Mississippi, said application is hereby denied.

ORDERED AND ADJUDGED this 11th day of June A.D., 1963.

/s/ Harold Cox
United States District Judge